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# Evolution and Progression of the Rights of Hindu Women in the Hindu Undivided Family (HUF)

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## ABSTRACT

*The Hindu Undivided Family (HUF) is specifically characteristic to the Hindu community and is a part of Hindu law. As per the Hindu Succession act 1956, Sikhs Buddhists and Jains along with Hindus are considered to be “Hindus”. Before 1956, the two prevalent schools governing succession and inheritance for Hindus were Dayabhaga and Mitakshara. Mitakshara was a school prevalent throughout the nation, on the other hand, Dayabhaga school had its stronghold only in the states of Assam and Bengal. Historically, inheritance and succession for the girl child and women in India has been nothing short of an uphill battle, with numerous blips and glitches that have needed to be rectified. Since independence, a variety of acts and amendments to existing acts have been introduced to ensure that women are not deprived of their right to equal inheritance. This research paper aims to look at the evolution and progression of rights given to Hindu women with a specific focus to their equal position and status in the Hindu Undivided Family.*

**Keywords:** *Hindu Succession Act 1956, Hindu Succession and Amendment Act 2005, Hindu Undivided Family, Coparcerner, Hindu women’s rights.*

## I. INTRODUCTION

When discussing the inheritance rights bestowed onto Hindu women, the beginning point of discussion is the Mitakshara and Dayabhaga schools who governed Hindu inheritance and succession for centuries. Most enlightened judicial minds will concur that both Mitakshara and Dayabhaga schools left much to be desired in terms of female inheritance and succession. In the Mitakshara school, women were not coparceners, unlike their male counterparts who were coparceners and ultimately women did not have an absolute stake in the property nor were they allowed joint inheritance by birth. However the silver lining was the concept of “Stridhan”, which was any property received by a women via gifts and inheritance, and it cannot be taken away by her husband or family members. In an exceptional case where both the parents and named male heirs are deceased and the child/ children are female, was a daughter(s) allowed to

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inherit her fathers inheritance. A widow as well could only inherit a specific portion of her husband's separate property.

In the Dayabhaga school of thought, the inheritance largely depended on the deceased's will or proximity to the deceased, all inheritance of the father is distributed post death and partition could not be claimed during the lifetime of the father. Those who derive most or more spiritual advantage from the deceased should inherit the property, thus women were also entitled to inherit property. Coparcenary comes into effect after father's death amongst his heirs, both male and female with restrictions. The caveat for women was that coparcenary cannot be exclusively female in Dayabahaga, thus in a case where a man dies leaving behind a widow and two daughters, his widow and daughters cannot become coparceners.

## **II. HINDU UNDIVIDED FAMILY (HUF) AND COPARCENERS**

Hindu Undivided Family (HUF) consists of all the descendants of a common ancestor in form of a Karta, coparceners and members. The eldest person in the family who is the head of the HUF is known as the "Karta". The primary or initial Karta is always a man, however after his demise, the next Karta is the eldest coparcener, who could be his son or daughter. A Karta's duty included managing the properties, distributing the income and managing all of the debts and liabilities and over all decision making on behalf of the family. Traditionally, the eldest male member and after his demise, the eldest surviving male member automatically became the Karta of the HUF.

Coparcenary is a feature of the Mitakshara school and this includes members, irrespective of gender, who receive the legal right to the ancestral and HUF property by and since birth. Coparceners are also default members of the HUF and can call for a partition of the ancestral property or Hindu Undivided Family, all assets under the Hindu Undivided Family are considered to be in joint ownership between its coparceners. Traditionally, the coparceners were the direct male descendants of the "Karta" and it included property inherited from one's father, grandfather and great-grandfather, however this practice was considered violative of a Woman's fundamental right to equality as guaranteed under the Indian Constitution since it discriminated against women on the ground of gender.

### **(A) Hindu Succession Act (1956)–**

The Hindu Succession Act 1956 combined and modified ancient Hindu Laws concerning succession and inheritance. Under this act, there was an elimination of separate laws based on the Mitakshara and Dayabhaga systems and a new robust mechanism for intestate property disposal was established via intestate succession. The act also recognised the right of Hindus to

make dispositions of their property through a will in favour of any person(s) they desire to bequeath their assets to. The notion of restricted estate for women was replaced with absolute ownership when it came to the property.

It also allowed the distinction to be made with regards to the property received from one's father, grandfather and great-grandfather from that of his child. The discrimination previously prevalent between the male and female heirs was done away with. A daughter and the daughter's off springs were considered to be major heirs, whether or not the daughter was married. Modifications were made to the Mitakshara Coparcenary rules and its devolution on to the survivors. With the new law, when the original undivided coparcener passes away it is assumed by law that a partition is requested, dividing the estates into distinct sections. Widows, daughters and mothers were some of the female heirs who were now recognised and granted rights. In terms the legal position of the widow, it was established that she was the principle heir and her right to inherit would not be challenged on grounds of adultery. She will still own the entire property in the scenario of re-marriage. The act also safe guards the rights of posthumous children.

#### **(B) Amendment (2005) to Hindu Succession Act (1956) –**

As seen earlier, coparceners are an important feature of Hindu Succession. While there are many members of a Hindu Undivided Family, every member is not eligible to be a coparcener. Traditionally, the status of coparcener bestowed upon a son entitled him to receive some special rights over the property. At the same time, a daughter was not given the status of a coparcener and the denial of this right on the grounds of dissimilarity of gender, though same category was visibly discriminatory in practice. The act also states that when any Hindu male dies, his stake in HUF property would devolve on the surviving coparceners through survivorship instead of succession. This contradicts the aim of the Hindu Code Bills, wherein the goal was to ensure that women had the right to own property and prevent discrimination on the basis of gender. The “graded inequity” was abolished by putting out the precedent and standard that both the genders should be treated equally for community to advance as a whole.

Article 6 of the Hindu Succession Act (1956) was greatly modified by the 2005 Amendment Act, where it was established that the daughters have the same rights in the property as their male counterparts. It clearly states that by birth a daughter will become a coparcener in the same manner the son becomes a coparcener by birth, she would have the same rights in the coparcenary property that she would get had she been a son, she would have the same liabilities in the coparcenary property as the son or had she been the son and lastly when discussing or

addressing Mitakshara coparcenary or coparceners, the term will include and imply both son and daughter.

In the scenario where a Hindu was born before the 2005 Amendment act but dies after the commencement of the act, the parties shares will devolve onto them by means of intestate or testamentary succession and not survivorship and the coparcenary property will be divided in such a manner as if a partition had taken place. Moreover the following conditions will apply, i) the daughter is given the same share as the son, ii) shares of a predeceased son or daughter which they would have got had they been alive will be allocated to that predeceased son or daughters child or children, iii) the predeceased child's share of a predeceased son or daughter shall be allocated to the child of the predeceased child who is the grandchild of the predeceased son or daughter. (To simplify this, it talks about the allocation of a share by a great-grandfather to his great-grandchild in the scenario where the great grandchild's parent and grandparent who were coparceners or members are deceased).

### III. JUDICIAL VERDICTS

#### (A) *Veenita Sharma vs Rakesh Sharma*

A landmark judgement where it was determined by a three judge bench that women have the right to their share in the ancestors property by birth, it is immaterial and irrelevant if the father was alive in 2005 when the amendment was passed. Moreover, it was reiterated that the coparcenary right has been awarded to women via the amendment to place them on an equal platform with the sons and alienating them from this right was outright discriminatory in nature and denying them their basic rights.

#### (B) *Prakash vs Phulavati*

In this case it was ruled that, from the day of inception of the Amendment act i.e. 9<sup>th</sup> September 2005, the changes made to Section 6 is not retroactive and applicable only to a living daughter of an alive coparcener, date of birth of the daughter being immaterial. Any division, partition, disposal or alienation taken place prior to December 20, 2004, the amendment act would not be applicable. A women/daughter's part of the coparcenary can only be applied as of September 9, 2005 as long as both she and her father are alive at the time.

#### (C) *Manu Gupta vs Sujata Sharma*

This recent judgement passed by Delhi High Court states that a woman can be a Karta of a Hindu Undivided Family and prior to the Amendment Act (2005), the eldest male coparcener usually became the Karta. This practice is no longer valid as today the eldest coparcener,

irrespective of gender should become the Karta of a Hindu Undivided Family. There is no law or tradition that prevents a woman from becoming a Karta and societal norms or practices cannot be a reason given for not following rights established by the legislature.

#### **IV. CONCLUSION**

The progression of equal inheritance and succession for women depends not only on the legislature and laws passed, but also on society's perception and views of equal inheritance of the girl child and women. While laws and remedies are at the disposal and availability of every citizen, more often than not women cower away or are advised not to fight for their inheritance and succession rights because of the patriarchal nature of society and the fear of being ostracised by the family and community. For the application of such laws, an effective machinery, mechanism and awareness needs to be in place on ground level to ensure the laws are being abided by.

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